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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/476,455	12/30/1999	KAZUHIRO FUJII	SIC-99-047	7874

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DELAND LAW OFFICE  
P.O. BOX 69  
KLAMATH RIVER, CA 96050-0069

EXAMINER


BAXTER, GWENDOLYN WRENN

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

 <b>Office Action Summary</b>	Application No. 09/476,455	Applicant(s) FUJII, KAZUHIRO	
	Examiner Gwendolyn Baxter	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 10, 12-14, 16-19, 22-48 and 50-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16, 17, 19, 26-28, 30-43, 47, 48 is/are allowed.
- 6) ☒ Claim(s) 10, 12-14, 18, 22-24, 29, 44-46 and 50-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

This is the ninth Office Action for serial number 09/476,455, Bell Crank Assembly and Mounting Bracket for a Bicycle Hub, filed on December 30, 1999. Claims 10, 12-14, 16-19, 22-24, 26-48 and 50-53 are pending.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10, 12-14, 18, 22-24, 29, 44-46 and 50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10, line 6, recites "the rear frame mounting bracket portion includes an axle opening dimensioned to receive a rear wheel axle of a bicycle therein". The size of the axle opening has been defined in terms of a rear wheel axle, which has not been positively recited in combination with the bell crank mounting bracket but functionally claimed. Since the rear wheel axle maybe in a variety of sizes depending upon the type and size of the bicycle employed; therefore, the claim is unclear and required correction. A similar problem occurs in claim 51.

Claim 10, line 14, recites a functional limitation "when the bracket is mounted to the bicycle and the bicycle is vertically upright." Consequently, it is unclear whether applicant intends to claim the combination of the bell crank mounting bracket with the bicycle. A similar problem occurs in claim 12. For the purpose of this office action, the subcombination has been considered.

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Claim 12, line 17, recites "the bracket". It is unclear to which bracket applicant is referring.

Claim 44, line 16+, recites "the motor mounting bracket portion is disposed in front of the rear frame mounting bracket portion and the first mounting ear extends laterally outwardly from the bicycle". The first mounting ear has been defined by the bicycle, which has not been positively recited but nominally recited. Consequently, it is not clear whether applicant intends to claim the combination of the bell crank mounting bracket and the bicycle.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10, 14, 18 and 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,184,993 to Swenson. Regarding claims 10, 14, 18 and 51-53, Swenson discloses a one-piece mounting bracket (Fig. 5) comprising: a mounting bracket portion (2) including an opening (68), a transition portion (3) extending downwardly from and inclined relative to the mounting bracket portion (2), a rear mounting portion (6) including an opening (6a) and extending from the inclined transition portion (3), and a mounting member (5) disposed on the transition portion (3); wherein the bracket portions are arranged and capable of being dimensioned such

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that the bracket is capable of attachment to a bicycle rear wheel axle such that the axle may extend through the rear mounting portion, the transition portion may extend forwardly along the side of the rear wheel and upwardly from the rear mounting portion, the mounting bracket portion may be disposed in front of the rear frame mounting portion with the mounting opening facing upwardly (when the bicycle is lying horizontally on the ground), and the mounting member may extend laterally outward from the bicycle. Swenson does not expressly teach the rear mounting portion opening (6a) being dimensioned to receive a rear wheel axle of a bicycle; however it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the dimensions of the opening because one would have been motivated to ensure proper sizing of the opening relative to an axle or rod to be received therein and further since it has been held that a change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F .2d 459, 105 USPQ 237 (CCPA 1955).

### *Response to Arguments*

Applicant's arguments filed December 27, 2004 have been fully considered but they are not persuasive. Since applicant has not positively claimed the bicycle and the subcombination has been considered here, the bell crank mounting bracket of the present invention does not distinguish over that of Swenson.

### *Allowable Subject Matter*

Claims 16, 17, 19, 26-28, 30-43, 47 and 48 are allowed.

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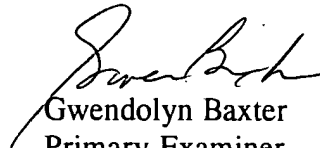
Claims 12, 13, 22-24, 29, and 44-46 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Baxter whose telephone number is 703-308-0702. The examiner can normally be reached on Monday-Wednesday, 8:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A Braun can be reached on 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gwendolyn Baxter  
Primary Examiner  
Art Unit 3632

March 20, 2005